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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE LUIS MEJIA,

Defendant and Appellant.

B147976

(Super. Ct. No. YA039570)

APPEAL from a judgment of the Superior Court of Los Angeles County. James R. Brandlin, Judge. Affirmed.

Horace N. Freedman, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, William T. Harter, Supervising Deputy Attorney General, and Jeffrey A. Hoskinson, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Appellant Jose Luis Mejia challenges his conviction for possession of cocaine on the ground the trial court improperly excluded evidence of acts of moral turpitude when it ordered disclosure of certain matters from the personnel files of the arresting officers. However, a request for discovery of information contained in a peace officer's confidential personnel file must be narrowly tailored to a specific factual scenario and must be supported by good cause. A request for evidence of all acts of moral turpitude is thus overbroad.

BACKGROUND AND PROCEDURAL HISTORY

Sheriff's Deputies Joey Ventigan and Gilbert Martinez were on patrol at 1:40 a.m. on January 31, 1999, when they saw appellant walking on a sidewalk. Appellant seemed startled to see the deputies and immediately increased his pace. The deputies became suspicious and illuminated him with their spotlights. Appellant removed his hand from his jacket pocket and dropped three objects to the ground. The deputies stopped their car, detained appellant, and recovered three bindles containing rock cocaine.

A jury convicted appellant of possessing cocaine. Appellant admitted a prior serious or violent felony conviction within the meaning of the "Three Strikes" Law. The trial court sentenced him to a second strike term of six years in prison.

DISCUSSION

1. The trial court did not abuse its discretion in limiting the scope of discovery of matters in Deputy Ventigan's and Deputy Martinez's personnel files.

Prior to trial, appellant filed a discovery motion seeking complaints and identifying information regarding anyone who filed a complaint or was interviewed regarding a complaint against Ventigan or Martinez "relating to acts of moral turpitude, including but not limited to allegations of false arrest, planting evidence, fabrication of police reports, fabrication of probable cause, and false testimony." Defense counsel's declaration stated, on information and belief, that Ventigan and Martinez filed a false report regarding appellant and gave false testimony at his preliminary hearing. The points and authorities

supporting the motion argued the deputies planted the cocaine. In a supplemental declaration, counsel contradicted the planted evidence theory by alleging, again on information and belief, that the deputies found the cocaine when they patted appellant down after detaining him without probable cause.

The trial court found good cause for the discovery of the names, addresses and phone numbers of persons who complained or were witnesses regarding complaints of false police reports, fabrication of probable cause, and acts of dishonesty. The court then conducted an *in camera* review of material produced by the Sheriff's Department. The court ordered the disclosure of the material presented by the Sheriff's Department with the exception of one complaint of rudeness and another regarding the deputies' failure to arrest someone.

Pitchess v. Superior Court (1974) 11 Cal.3d 531 and Evidence Code sections 1043 through 1045 permit discovery of information contained in a peace officer's confidential personnel records under certain circumstances. (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 81-82.) A defendant seeking discovery from an officer's personnel records must file a motion describing the type of records sought and showing, *inter alia*, the materiality of the information to the subject of the pending action and good cause for disclosure. (Evid. Code, §§ 1043, 1045.) Upon such a showing, the trial court examines the records *in camera* and discloses only those records, if any, that are both relevant to the pending action and are not statutorily excluded from disclosure by Evidence Code section 1045, subdivision (b). We review the trial court's decision for abuse of discretion. (*People v. Jackson* (1996) 13 Cal.4th 1164, 1220.)¹

Appellant contends because acts of moral turpitude are relevant to a witness's credibility, the trial court should have permitted him to discover evidence of acts of moral turpitude contained in Ventigan's and Martinez's personnel records.

¹ Unlike *People v. Mooc* (2000) 82 Cal.App.4th 636, review granted October 18, 2000, S090666, nothing indicates the Sheriff's Department failed to produce all materials potentially within the scope of appellant's motion.

Acts of moral turpitude are relevant to a witness's credibility. (*People v. Wheeler* (1992) 4 Cal.4th 284, 295-296.) Appellant was free to develop and introduce evidence regarding acts of moral turpitude committed by Ventigan, Martinez, or any other witness. The discovery he sought however, was of material contained in the deputies' confidential personnel records. Accordingly, the mere relevance of acts of moral turpitude was insufficient to warrant disclosure. (*California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1024.) To permit discovery of any generally relevant matter in a peace officer's personnel file would effectively destroy the protection provided such files in Evidence Code sections 1043 through 1045. (*Ibid.*)

Evidence Code sections 1043 and 1045 and the line of cases commencing with *Pitchess* instead require a defendant to set forth a specific factual scenario applicable to his or her case, e.g., an officer's use of coercive interrogation techniques (*People v. Jackson, supra*, 13 Cal.4th at pp. 1220-1221), planting evidence or fabricating probable cause (*People v. Gill* (1997) 60 Cal.App.4th 743, 750), or misstating or fabricating facts in a police report (*People v. Hustead* (1999) 74 Cal.App.4th 410, 415-418). The trial court is permitted only to order disclosure of complaints or incidents directly relevant to the specific factual scenario asserted by the defendant. (See, e.g., *People v. Jackson, supra*, 13 Cal.4th at p. 1220 [where defendant asserted that his confession was coerced, he was entitled to discover only complaints alleging coercive interrogation techniques by the officer in question, not all excessive force complaints against the officer].)

The trial court thus did not abuse its discretion by rejecting appellant's request for information about complaints of all acts of moral turpitude by Ventigan and Martinez. Indeed, the court granted appellant broader discovery than his motion warranted by permitting disclosure of complaints regarding acts of dishonesty. Appellant was entitled, at most, to disclosure of information pertaining to the specific factual scenarios described in his motion, namely, fabrication of probable cause and filing false reports.

2. Any error in instructing the jury with CALJIC No. 17.41.1 was harmless.

Appellant contends that the trial court erred by instructing the jury with CALJIC No.

17.41.1. We need not, and do not reach this issue, which is presently pending before the California Supreme Court.²

Moreover, the error, if any, would have been harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.) There was no jury deadlock, no holdout jurors, and there was no report of any juror refusing to deliberate or to follow the law. In short, there was no indication that the use of CALJIC No. 17.41.1 affected the verdict. A further assessment of the validity is deferred to a case where evidence is present suggesting it influenced deliberations in some way.

DISPOSITION

The judgment is affirmed.

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BOLAND, J.*

We concur:

LILLIE, P.J.

WOODS, J.

² Numerous cases raising this issue, including *People v. Taylor* (2000) 80 Cal.App.4th 804, review granted August 23, 2000, S088909, are pending before the Supreme Court.

* Justice of the Court of Appeal, Second Appellate District, Division Eight, assigned to Division Seven by the Chief Justice pursuant to article VI, section 6 of the California Constitution.